

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 511 of 2004

State of Uttaranchal through Divisional Forest Officer,
Tarai Central Forest Division, Haldwani, District Nainital.

... Appellant.

Vs.

Smt. Deepa Pant, W/O late Naval Kishore Pant,
House No. 5/562, Malla Gorakhpur, Haldwani, District Nainital.

... Respondent.

**Sri Bhupender Singh, learned Standing Counsel for appellant.
Sri M.C. Pant, learned counsel for the respondent.**

**Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.**

Date July 04, 2006

This appeal under Section 30 of the Workmen's Compensation Act, 1923 is directed against the judgment and award dated 12-1-2004, passed by the Workmen Compensation Commissioner/Assistant Labour Commissioner, Haldwani, District Nainital (*for short the Commissioner*) in W.C. Case No. 24 of 2003, Smt. Deepa Pant Vs. Divisional Forest Officer, whereby the learned Commissioner has awarded compensation of Rs. 2,48,855/- in favour of the claimant-respondent against the appellant-State.

Relevant facts necessary for a just decision of the present appeal are that claimant-respondent filed a claim petition for compensation for the accidental injuries suffered by her husband Naval Kishore Pant aged 43 years and getting Rs. 2550/- per month as wages in the course of his employment, who was workman under the employment of the D.F.O. as daily wager on 13-3-2003 involving Truck No. UP 25-6200 and Truck Trela No. H.R.-38-J-1062. It was alleged that the Trela dashed against the Forest Check Post Barrier at Teenpani and fell into a *Khadd*, with the result the workman died at the spot. Notices were issued to the opposite party, which filed its reply admitting that on the relevant

date, i.e. 13.3.2003, the deceased workman was in its employment and the incident also occurred as alleged. It was also stated that the Forest Department of the Uttaranchal Government had already paid Rs. 1,00,000/- towards compensation and the claimant was taken on employment in the Forest Department, therefore, the claimant was not entitled for compensation. Both the parties led evidence before the learned Commissioner. The learned Commissioner after hearing both the parties and perusing the material on record, came to the conclusion that the deceased workman died in the course of his employment due to accidental injuries suffered by him and accordingly awarded the compensation in favour of the claimant-respondent, as mentioned earlier.

The only question raised for determination in this appeal from the side of the appellant is whether the owner/Insurance Company of the Truck No. U.P. 25-6200 was the necessary party? If so, its effect?

We have heard the rival contentions of the learned counsel for the parties and perused the entire material on record including the lower court record.

We have perused the written statement filed on behalf of the appellant-employer before the learned Commissioner very carefully. There is no such plea in the written statement. In paragraph no.1, it was admitted that on 13.3.2003 Naval Kishore Pant was employed as daily wager under the employment of the forest department at its Teenpani Barrier where at 6.20 a.m. due to collision between Truck No. UP 25-6200 and Truck *Trella* No. HR-38J-1062, the truck overturned due to the collision and *Trella* struck the forest barrier and fell into a Khadd, with the result the workman posted at the barrier sustained fatal injuries and died at the spot. In paragraph no.2, it was admitted that claimant is the widow of the deceased workman. In para no.3 the wages of the deceased was admitted. In paragraph no.4 it was denied that any

application or papers were submitted to the forest department and in the last paragraph no.5, the claim of the claimant was denied. This is all in the written statement. It is well settled that a party cannot take a plea which was not raised by it in its pleadings. Moreover, it was admitted by the appellant in its written statement that due to the collision by the Truck **Trella**, the truck involved in the accident overturned. Thus, impliedly, the appellant itself admitted that there was fault of the driver of truck **trella**. Therefore, it does not lie in the mouth of the appellant to raise such a plea in appeal, which was not pleaded in its pleadings. Moreover, neither substantial question of law has been raised in the memo of appeal nor any such question is involved for determination in this appeal. Accordingly, the question is answered in favour of the claimant-respondent and against the appellant. It is held that the petition is not bad for non-joinder of necessary party as alleged by the appellant.

In the facts and circumstances of the case, there is no merit in the present appeal, which is liable to be dismissed outright.

The appeal is hereby dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

The compensation amount deposited with the learned Commissioner be released in favour of the claimant-respondent.

(B.S.Verma,J.)

(P.C.Verma,J.)